Supreme Court, U.S.
FILED
SEP 5 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-181

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

PATRICIA A. DIXON,

Petitioner,

v.

WESTINGHOUSE ELECTRIC CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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September 5, 1986

The Daily Record Co., Baltimore, MD 21202

QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals properly concluded that Petitioner's charge was never initially instituted with an agency having authority to process her charge because the Maryland Commission on Human Relations (hereinafter "MCHR") had contractually waived its right to process the charge pursuant to a work-sharing agreement between the MCHR and the Equal Employment Opportunity Commission (hereinafter "EEOC") prior to the EEOC's transmittal of a copy of the charge to the MCHR.

LIST OF PARTIES

Pursuant to Rules 21.1(b) and 28.1, Respondent states that the following parties appeared in the United States Court of Appeals for the Fourth Circuit:

> Patricia A. Dixon, Petitioner: an individual with no corporate affiliates; and
>
> Westinghouse Electric Corporation, Respondent: a corporation with corporate affiliates.[1]

[1] Said corporate affiliates are listed in Respondent's Appendix 1a-4a.

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The Respondent, Westinghouse Electric Corporation, respectfully requests that this Court deny the Petition for a Writ of Certiorari seeking review of the Fourth Circuit's decision in this case.

OPINIONS BELOW

The Opinion of the District Court is reported at 615 F. Supp. 538 (D.C. Md. 1985) (Pet. Supp. App. 1-29). The opinion of the Court of Appeals is reported at 787 F.2d 943 (4th Cir. 1986) (Pet. App. 39-53).

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on April 10, 1986. A Petition for a Writ of Certiorari was filed on July 9, 1986, but rejected by the Clerk of the U.S. Supreme Court because it did not conform to Supreme Court Rules. A second Petition for a Writ of Certiorari was substituted and accepted by the Clerk on August 4, 1986, 26 days after the initial filing was attempted and 116 days after the judgment of the court below was entered. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

The instant case comes before this Court on Petition for a Writ of Certiorari from a ruling of the Court of Appeals for the Fourth Circuit. The controversy involves a work-sharing agreement between the EEOC and the MCHR wherein the MCHR waived its right to process certain categories of charges initially filed with the EEOC. The charge of discrimination filed by Petitioner, Patricia A. Dixon (hereinafter "Dixon" or "Petitioner"), was within the category of charges over which the MCHR had waived jurisdiction.

Dixon was employed by Westinghouse Electric Corporation (hereinafter "Westinghouse" or "Respondent") as a drafter in its engineering and drafting department. On December 18, 1981, her employment with Westinghouse was terminated.

Following her termination, Dixon filed a grievance with the Salaried Employee's Association (hereinafter "SEA"), of which she was a member, grieving her termination. Her grievance was not advanced after the third step meeting.

This rendered Westinghouse's written denial of her grievance at that level as final and the matter was closed.[2]

Dixon also filed a Charge with the EEOC on August 4, 1982, 230 days after her termination, alleging sex discrimination. No charge was filed by Dixon with any Maryland employment discrimination agency.

At the time Dixon's charge was filed with the EEOC, the EEOC and the MCHR were parties to a work-sharing agreement entered into on February 10, 1981. One of the purposes of this agreement was to establish procedures to minimize duplication of efforts in the handling of charges deferred pursuant to Section 706(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-5(c). The work-sharing agreement provided that the EEOC would take primary responsibility for processing all charges originally received by the EEOC (paragraph 4.c); in addition, the agreement specifically provided that the EEOC would take primary responsibility for processing all charges covered under Title VII received by the EEOC more than six months but less than 300 days after the alleged violation (paragraph 4.c.6). Both of those conditions prevailed with respect to Dixon's charge; consequently, the MCHR had relinquished any jurisdiction with regard to her charge.

In accordance with the work-sharing agreement between the EEOC and the MCHR, EEOC transmitted a copy of the charge and a transmittal form 212-A to the

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[2] Dixon was subsequently reinstated to her position at Westinghouse on January 3, 1983 after discussions between the SEA and Westinghouse. She received the salary she would have been paid had she been continuously employed between December 18, 1981 and January 3, 1983.

MCHR on August 6, 1982. The MCHR returned the form 212-A on August 11, 1982 indicating, in accordance with the work-sharing agreement, that it would not process the charge.

On June 16, 1983, the EEOC issued Dixon a right to sue letter, having made no specific finding regarding the merits of her charge. Dixon thereafter filed an action in the United States District Court for the District of Maryland alleging discrimination based on her sex and intentional infliction of emotional distress by Westinghouse. Westinghouse filed a Motion for Summary Judgment and a Supplemental Motion for Summary Judgment, both of which were granted by the District Court, dismissing the complaint. The District Court held that the contractual waiver by the MCHR of its right to initially process the charge in the work-sharing agreement between the MCHR and the EEOC resulted in Dixon's charge never having been "initially instituted" with the MCHR. Since the charge was never initially instituted with the MCHR as required by Section 706(e), the Court reasoned that the extended 300-day time period for filing with the EEOC in Section 706(e) was not available and that the regular 180-day period controlled. Dixon's complaint was therefore untimely in that it was filed on the 230th day.[3]

Dixon appealed the District Court's decision to the U.S. Court of Appeals for the Fourth Circuit. The Fourth Circuit affirmed the decision below solely on the ground that since the MCHR had contractually waived its right to process Dixon's charge in the work-sharing agreement, her charge was never initially instituted with the MCHR

[3] The Court also held that Dixon's tort claim was barred for failure to exhaust the grievance-arbitration procedures provided in the collective bargaining agreement to which she was subject at the time of her termination.

and the extended 300-day filing period of Section 706(e) was not available to her.

REASONS THE PETITION SHOULD BE DENIED

I.

THE DECISION BELOW IS NARROW AND DOES NOT PRESENT AN ISSUE FOR SUPREME COURT REVIEW.

The Fourth Circuit's well-reasoned conclusion that Petitioner's charge was not initially instituted with the MCHR was based on the MCHR's advance contractual waiver of its right to process the charge in its work-sharing agreement with the EEOC. The Court of Appeals further reasoned that because of this contractual waiver by the MCHR, Petitioner's charge was never initially instituted with a state agency having authority to process the charge as required under Section 706(e) of Title VII, 42 U.S.C. § 2000e-5(e), and therefore the 300-day extended filing period in Section 706(e) did not apply.

Contrary to Petitioner's assertions, the decision of the Fourth Circuit was not based in any way upon the issue of whether Petitioner's charge would have been timely under state law had it been filed with the state agency. In fact, the Court specifically stated in footnote 2 that it was *not* addressing the state statute of limitations issue. 787 F.2d at 945.

The only issue addressed by the Fourth Circuit was the effect of the contractual waiver of jurisdiction by the MCHR in the work-sharing agreement. There is no dispute that the MCHR waived its jurisdiction over Petitioner's charge in the work-sharing agreement with the EEOC and that the EEOC and the MCHR had the authority, pursuant to Section 709(b) of Title VII, to enter into the work-sharing agreement. The Fourth Circuit

simply applied the terms of the work-sharing agreement to the present situation in finding that the transmittal of Petitioner's charge by the EEOC to the MCHR was for informational purposes only. No other conclusion would have been logical.

After concluding that the charge was never instituted with the MCHR, the Court went on to apply the plain language of Section 706(e). Section 706(e) of the Act provides:

> A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred . . . except that in a case of an unlawful employment practice with respect to which the person aggrieved has *initially instituted* proceedings with a State or local agency *with authority to grant or seek relief from such practice* . . . such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred. . . . (Emphasis added).

Because the MCHR had waived jurisdiction it lacked authority to consider Petitioner's charge and could not, therefore, be considered a deferral agency for purposes of her charge. Thus, the Fourth Circuit properly concluded that Petitioner was limited to the 180-day filing period.

II.

THERE IS NO CONFLICT WITH THE DECISIONS OF THIS COURT OR AMONG THE CIRCUITS.

Nothing in the Fourth Circuit's decision conflicts with any decisions by this Court or by any Circuit Court. In fact, neither this Court nor any other Circuit Court has even considered the work-sharing agreement issue involved in this case.

Petitioner's contention that the Fourth Circuit's decision conflicts with the decisions of this Court is totally without

merit. This Court has stated that the only reason for the extended filing period is to give state agencies an opportunity to process and remedy discrimination charges.

> *The [legislative] history identifies only one reason for treating workers in deferral States differently from workers in other States: to give state agencies an opportunity to redress the evil at which the federal legislation was aimed, and to avoid federal intervention unless its need was demonstrated.* The statutory plan was not designed to give the worker in a deferral State the option of choosing between his state remedy and his federal remedy, nor indeed simply to allow him additional time in which to obtain state relief. Had that been the plan, a simple statute prescribing a 90-day [now 180-day] period in nondeferral States and a 210-day [now 300-day] period in deferral States would have served the legislative purpose. Instead, Congress chose to prohibit the filing of any federal charge until after state proceedings had been completed or until 60 days had passed, whichever came sooner. (Emphasis added) *Mohasco Corp. v. Silver*, 477 U.S. 807, 821 (1980).

As recognized by the Fourth Circuit in its decision, Section 706(e) expressly states "that in order for the 300-day period for filing EEOC charges to apply, the plaintiff must have *initially instituted* proceedings with a State or local agency *with authority to grant or seek relief* from such [unlawful employment] practice. 42 U.S.C. § 2000e-5(e)." 787 F.2d at 945-946. (Emphasis added) Since the MCHR in the present case relinquished any authority to handle the charge, Maryland was tantamount to a non-deferral state for purposes of this case.

The only Circuit Court decision cited by Petitioner as being in conflict with the Fourth Circuit's decision did not address the "institution" of proceedings with a state deferral agency: it addressed the "termination" of proceedings by a state agency. In that case, *Isaac v. Harvard*

University, 769 F.2d 817 (1st Cir. 1985), not only was the charge transmitted to the state agency but the state agency actually acted upon the charge and even issued a finding. There was never a question concerning initial institution of the charge with the state agency. While the issue in *Isaac* is not relevant to *Dixon*, the rationale employed by the *Isaac* court of giving states the opportunity to remedy discrimination charges is in complete accord with the Fourth Circuit's rationale in *Dixon*.

III.

REVIEW BY THIS COURT IS NEITHER APPROPRIATE NOR NECESSARY.

Petitioner argues that the Fourth Circuit's decision would play havoc with the EEOC's many work-sharing agreements with state and local deferral agencies. This argument is just another example of the time-worn "parade of horribles" invoked to defend an indefensible position.

Section 709(b) of Title VII, 42 U.S.C. 2000(e)-8(b), empowers the EEOC to enter into written agreements with state or local discrimination agencies regarding jurisdiction over particular charges. The 1981 work-sharing agreement between the EEOC and the MCHR which was in effect at the time Petitioner filed her charge of discrimination was entered into pursuant to Section 709(b)'s grant of authority.[4] Section 709(b) also specifically permits the EEOC to revise any work-sharing agreement. If the EEOC believes that the Fourth Circuit's decision somehow upsets its current work-sharing agreement with the MCHR, all the EEOC has to do is revise the agreement in order to bring it into conformity with the

[4] It should be noted that Petitioner makes reference to, and has copied in her appendix, a work-sharing agreement between the EEOC and the MCHR executed in 1985, and not in effect at the time Petitioner filed her charge (Pet. App. 54-64). While the relevant paragraphs of the agreement have not changed substantively, paragraph 4.c.6 of the 1981 agreement is now paragraph 4.c.7 in the 1985 agreement.

decision. Surely the EEOC is supposed to follow the law — the law is not supposed to follow the EEOC.

Petitioner finally asserts a fairness argument: that lay claimants should only be required to comply with the 300-day extended filing period for all charges in deferral states. A similar argument was advanced in *Mohasco* wherein it was argued that a lay person would always assume he had 300 days within which to file. This Court quickly dispensed with that argument in *Mohasco*, stating that it was more likely that a lay person would, and should, regard the general obligation of filing within 180 days as the standard of diligence to satisfy. 447 U.S. at 825.

CONCLUSION

Since the Fourth Circuit is the first Circuit Court to deal with the effect of a work-sharing agreement between the EEOC and a state agency on the 300-day extended filing period under Title VII, its decision in this case obviously does not conflict with any decision of this Court or of any other Circuit. Petitioner has not shown one instance of conflict. This case has been decided under well-settled principles of law and does not raise any question which requires consideration by this Court. Therefore, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

RULE 28.1 LIST

Westinghouse Electric Corporation affiliates and subsidiaries (other than wholly owned subsidiaries) are:

Name	*Incorporated In*	*% of Ownership*
Compagnie des Dispositifs Semiconducteurs Westinghouse (CDSW)	France	81.3
Eletrocontroles Villares, Ltda. (EVL)	Brazil	30
Electronic Office Centers of America Corporation	Delaware	45.37
Eletromar Industria Eletrica Brasileira, S.A.	Brazil	61.8
Email Limited	Australia	.3
Ercole Marelli & Company, S.p.A.	Italy	1.9
Escorts, Ltd.	India	1.4
Franco Tosi S.p.A.	Italy	.3
Galileo Argentina C.I.S.A.	Argentina	40.3
Galileo Uruguaya, S.A.	Uruguay	91.7
Industria IEM, S.A. de C.V.	Mexico	9
Infrared Fiber Systems, Inc.	Delaware	48
Innovative Technologies, Inc.	Delaware	50
Maihak A. G. (H.)	West Germany	89
Mecanica Pesada, S.A.	Brazil	2.1
Mex Control S.A. de C.V.	Mexico	49
Mictron, Inc.	Missouri	45
Mitsubishi Electric Corporation	Japan	1.27
Mitsubishi Nuclear Fuel Co., Ltd.	Japan	34
Perceptics	Tennessee	38.
Powerex, Inc.	Delaware	45

Name	*Incorporated In*	*% of Ownership*
Project Funding Corporation	Delaware	33.3
Schneider S.A.	France	.63
Sentec Corporation	Delaware	49
Serratosa & Castello, S.A.	Uraguay	5.9
Siam di Tella, Ltd.	Argentina	4.17
Siam di Tella, Ltd.	Uraguay	5.9
Silectra S.A. de C.V.	Mexico	40
Siliconix, Inc.	California	35.3
Speech Plus	California	11
Theta J. Corporation	Massachusetts	3.4
Toshiba Westinghouse Electronics Corporation	Maryland	50
Turbine Metal Technologies, Inc.	Washington	30
Tyree Industries Limited	Australia	68.8
Tyree-Power Construction Limited	New Zealand	49.9
Westralian Transformers Pty. Limited	Australia	37.5
United Western Technologies Corp.	Delaware	10
Vektron S.A.	Mexico	24.5
W.S. Insulators	India	2.5
WM Power Products, Inc.	Delaware	50
Porta Pack Corporation	Delaware	50
Horizon International Television, Inc.	California	50
Westinghouse Canada Inc.	Canada	95.15
Industrias Electronicas, S.A. (INDELEC)	Venezuela	20
Transformadores de Distribucion Trade, S.A. (TRADESA)	Venezuela	40
Westinghouse Electro Metalurgicas C.A. (WEMCA)	Venezuela	78.82
CMW Sistemas, Ltda. (CMWS)	Brazil	49

Name	*Incorporated In*	*% of Ownership*
CMW Equipamentos, Ltda. (CMWE)	Brazil	49
Eletromar Industria Electrica Brasileira, S.A.	Brazil	7.1
Galileo Argentina, C.I.S.A.	Argentina	17
Galileo Uruguaya, S.A.	Uruguay	91.7
Industry Services Company of Saudi Arabia, Ltd. (ISCOSA)	Saudi Arabia	75
Korea Industry Services Co., Ltd.	Korea	60
Westinghouse, S.A. (WESA)	Spain	51
Iberatomica	Spain	8
Westinghouse Projectos Electricos, S.A. (WEPESA)	Spain	30.3
Westinghouse Asia Controls Corp.	Philippines	66.66
Ercole Marelli & Company, S.p.A.	Italy	4
Elektrik Techizati Imalti Tesisati, A.S.	Turkey	4.23
Hyosung Heavy Industries, Ltd.	Korea	4.5
Westinghouse Electric Supply Company of Saudi Arabia (WESCOSA)	Saudi Arabia	60
IEM S.A.	Mexico	23.7
Industria IEM, S.A. de C.V.	Mexico	91
Mex Control, S.A. de C.V.	Mexico	51
Silectra, S.A. de C.V.	Mexico	60
WEXICO Systems and Services, Ltd.	Saudi Arabia	40
China Industry Services Co., Ltd.	Taiwan	75
Transformadores TPL S.A.	Colombia	42.3
Electro — Fanal S.A.	Brazil	65
Mitsubishi-Westinghouse Electric SGC, Ltd.	Japan	50
Westinghouse E-Mail, Ltd.	Australia	51
Cemac Westinghouse Pty. Ltd.	Australia	50

Name	*Incorporated In*	*% of Ownership*
Contradores Electricos, C.A.	Ecuador	19
Westinghouse Saudi Arabia Ltd. (WSAL)	Saudi Arabia	10
Westinghouse Projectos Electricos, S.A. (WEPESA)	Spain	40
Westinghouse, S.A.	Spain	11.29
Galileo Argentina, C.I.S.A.	Argentina	34
Galileo Uruguaya, S.A.	Uruguay	91.7
IEM S.A.	Mexico	19.59
Mex Control, S.A. de C.V.	Mexico	51
Silectra, S.A. de C.V.	Mexico	60
Industria IEM, S.A. de C.V.	Mexico	91
Mitsubishi Electric Corporation	Japan	3.29